

REMARKS

Claims 1, 2, 4, 7, 11 through 14, and 16 through 20 have been amended.

Claims 1 through 20 remain in the application.

The disclosure was objected to because on an informality on line 2 of page 7.

Accordingly, the specification has been amended on page 7, line 2 to change "21" to "22" for the lock pin. It is respectfully submitted that the specification, as amended, overcomes the objection and is acceptable.

Claims 7, 14, and 17 were objected to because of an informality in these claims.

Accordingly, claims 7, 14, and 17 have been amended to correct the informality and maintain consistent terminology. It is respectfully submitted that claims 7, 14, and 17, as amended, overcome the objection.

Claims 14, 18, and 19 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

Claims 14, 18, and 19 have been amended to provide proper antecedent basis for the phrase "said sidewalls". It is respectfully submitted that claims 14, 18, and 19 are allowable over the rejection under 35 U.S.C. § 112, second paragraph.

Claims 9 and 19 have been allowed.

Claims 18 was rejected under 35 U.S.C. § 102(b) as being anticipated by Ponder (U.S. Patent No. 4,730,841). Applicant respectfully traverses this rejection.

U.S. Patent No. 4,730,841 to Ponder discloses a trailer hitch locking device. A trailer hitch coupling device includes a base plate 10, post 12, closure plate 14, locking rod 16, and locking means enclosure 18. The post 12, centrally disposed on and firmly interconnected to a central portion 20, comprises a preferably hollow cylinder closed at its

upper end, with a cross-sectional diameter and height selected to allow post 12 to be received in and substantially fill the socket of a trailer hitch coupler. In FIG. 4, the device is used by rotating closure plate 14 about its hinged interconnection with the base plate 10 to an open position, inserting post 12 into the socket of the trailer hitch coupler to the position depicted in FIG. 4, and rotating closure plate 14 in the opposite direction about the hinged interconnection to a closed position with aperture 50 in locking plate 48 aligned with aperture 52 in locking means enclosure 18. Ponder does not disclose a main body for connection to a hitch tube and having a front face with an opening adapted to allow passage of a hitch into an open end of the hitch tube and a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end with the main body including a plurality of apertures extending through the sidewalls.

In contradistinction, claim 18, as amended, clarifies the invention claimed as a hitch cover assembly including a main body for connection to a hitch tube and having a front face with an opening adapted to allow passage of a hitch into an open end of the hitch tube and opposed side walls extending from the front face. The hitch cover assembly also includes a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end. The main body includes a plurality of apertures extending through the sidewalls.

A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q.

781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

Ponder '841 does not disclose or anticipate the claimed invention of claim 18. Specifically, Ponder '841 merely discloses a trailer hitch locking device in which a post is a hollow cylinder closed at its upper end to be received in and substantially fill the socket of a trailer hitch coupler. Ponder '841 lacks a main body for connection to a hitch tube and having a front face with an opening adapted to allow passage of a hitch into an open end of the hitch tube and a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end with the main body including a plurality of apertures extending through the sidewalls. Contrary to the Examiner's opinion, the locking enclosure means 18 in Ponder '841 is not a hitch tube on a motor vehicle. In FIG. 4 of Ponder '841, the unlabeled structure is a socket portion of a tongue on a trailer. Applicant invites the Examiner to review the patents listed in Col. 1, lines 28 through 42 of Ponder '841 to realize that the device of Ponder '841 is not for a hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application. As such, Ponder '841 fails to disclose the combination of a hitch cover assembly including a main body for connection to a hitch tube and having a front face with an opening adapted to allow passage of a hitch into an open end of the hitch tube and a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end with the main body including a plurality of apertures extending through the sidewalls as claimed by Applicant. Therefore, it is respectfully submitted that claim 18 is allowable over the rejection under 35 U.S.C. § 102(b).

Claims 1 through 8, 10 through 18, and 20 were rejected under 35 U.S.C. § 103 as being unpatentable over Strader (U.S. Patent No. 4,196,918) in view of Ponder '841. Applicant respectfully traverses this rejection.

U.S. Patent No. 4,196,918 to Strader discloses a utility trailer frame assembly. Compression members or pads 70, 72 of plastic such as nylon or other suitable material are affixed to opposite external sides of a tongue projection 28 and cooperate with stud mounting plates 34,36 rigidly to clamp therebetween the inboard ends 46',48' of leaf springs 46,48 in the extended position of a draw tongue 22 when the leaf springs are received over the mounting studs. Strader does not disclose a main body having an aperture adapted fit over a hitch tube and to allow insertion of a hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

In contradistinction, claim 1, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an aperture adapted to fit over a hitch tube and to allow insertion of a hitch into the hitch tube. The trailer hitch cover assembly also includes an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube. The trailer hitch cover assembly further includes a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture. Claims 2, 12, 13, and 20 have been amended similar to claim 1 and include other features of the present invention.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art

absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claims 1, 2, 12, 13, and 20. Specifically, Strader ‘918 merely discloses a utility trailer frame assembly having compression pads of plastic affixed to opposite external sides of a tongue projection. Strader ‘918 lacks a main body having an aperture adapted to fit over a hitch tube and to allow insertion of a hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture. In Strader ‘918, the hitch draw tongue 22 is not a hitch tube to allow insertion of a hitch therein and the spine 12 is not a main body having an aperture adapted to fit over a hitch tube and allow insertion of the hitch into the hitch tube. Ponder ‘841 merely discloses a trailer hitch locking device in which a post is a hollow cylinder closed at its upper end to be received in and substantially fill the socket of a trailer hitch

coupler. Ponder '841 lacks a main body having an aperture adapted to fit over a hitch tube and to allow insertion of a hitch into the hitch tube and an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube. Contrary to the Examiner's opinion, the locking enclosure means 18 in Ponder '841 is not a hitch tube on a motor vehicle. In FIG. 4 of Ponder '841, the unlabeled structure is a socket portion of a tongue on a trailer. Applicant invites the Examiner to review the patents listed in Col. 1, lines 28 through 42 of Ponder '841 to realize that the device of Ponder '841 is not for a hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application. There is no suggestion or motivation in the art to combine Strader '918 and Ponder '841 together.

The references, if combinable, fail to teach or suggest the combination of a trailer hitch cover assembly including a main body adapted to be disposed over a hitch tube and adapted to allow insertion of a hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a cover plate hingedly connected to the main body and being movable between a closed position and an open position as claimed by Applicant. The claimed invention is novel and unobvious because the hitch cover assembly provides a hinged cover that may be both readily opened for receiving a hitch and may be closed to protect the hitch tube. Therefore, it is respectfully submitted that claims 1, 2, 12, 13, and 20 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

Claim 18 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/982,619 in view of U.S. Patent No. 5,603,178 to Morrison. Claims 1, 12, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,176,506 to Blake in view of Morrison '178

and Ponder '841. Claims 1, 12, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,934,699 to Blake in view of Strader '918. Applicant respectfully traverses these rejections.

As to claim 1 of the present application, claim 1, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an aperture adapted to fit over a hitch tube and to allow insertion of a hitch into the hitch tube. The trailer hitch cover assembly also includes an insulating member disposed within between the main body and the hitch tube and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

As to copending Application No. 09/982,619, claim 1 claims a trailer hitch cover assembly including a hitch insert having a first aperture extending longitudinally therethrough. The hitch insert is adapted to fit over a hitch tube on a motor vehicle. The trailer hitch cover assembly further includes a rotatable door connected to the hitch insert for closing and opening the first aperture.

U.S. Patent No. 5,603,178 to Morrison discloses an ornamental cover for a trailer hitch socket. Morrison '178 claims, in claim 1, an ornamental cover for use with a hitch socket of a vehicle, wherein the hitch socket includes an opening configured to receive a tongue therein and a wall with a hole therethrough. The ornamental cover includes a decorative body configured for affixation to the hitch socket. The decorative body includes a plate with a first surface and an insert connected to the plate and fittable into the opening of the hitch socket so that the plate's first surface faces away from the hitch socket when the insert is fitted into the opening of the hitch socket. The decorative body also includes an elongate ear extending from the insert and being insertable within the hitch socket, the ear having a bore therethrough configured to receive an external, removable fastener to affix the ear within the hitch socket and against the wall when

the insert is fitted into the hitch socket. The decorative body further includes an internally threaded nutsert fitted within the bore, wherein the fastener may be threaded through the nutsert.

U.S. Patent No. 4,196,918 to Strader discloses a utility trailer frame assembly. Strader '918 claims, in claim 1, a trailer frame and suspension system including a hollow spine adapted to extend lengthwise of a trailer body and a trailer draw tongue telescopically carried within the spine and slideable longitudinally therewithin between a tow position in which the tongue extends from the spine for coupling to a tow vehicle and a retracted storage position in which the tongue is withdrawn into the spine. The system also includes means for suspending a ground-engaging trailer wheel from the spine and including a portion adapted to be located internally of the spine adjacent the draw tongue. The system includes opposed clamping means carried by the tongue and the spine internally of the spine and having a releasing relationship with the portion of the wheel suspension means to condition the suspension for removal from the frame in the retracted position of the draw tongue and operable in the extended tow position of the draw tongue for rigidly clamping the portion within the spine and thereby mounting the wheel suspension means on the frame such that the wheel is cantilevered from within the spine.

The double-patenting doctrine precludes one person from obtaining more than one valid patent for the same invention or an obvious modification of an invention. Double patenting is concerned with attempts to claim the same or related subject matter twice. Thus, the standard for comparison for the second patent is what was claimed in the first patent, not what was *disclosed* in the specification of the first patent. "In general, a rejection on grounds of double patenting relies upon an analysis similar to the obviousness analysis relevant to a rejection pursuant to §§ 102(e) and 103; the key difference is that a double-patenting rejection looks solely to the claims of the prior art reference, and not to the entire disclosure of the prior art reference, as the basis for comparison. . . . A rejection for obviousness must be based on a comparison of

the invention to the entirety of the disclosure in the prior art reference, whereas an obviousness-type double-patenting rejection must be grounded on a comparison of the invention to the claims, and only the claims, of the prior art reference.” Purdue Pharma L.P. v. Boehringer Ingelheim GmbH, 98 F.Supp.2d 362, 392, 55 U.S.P.Q.2d 1168, 1190 (S.D. N.Y. 2000), aff’d, 237 F.3d 1359, 57 U.S.P.Q.2d 1647 (Fed. Cir. 2001).


None of the references cited, either alone or in combination with each other, render obvious the claimed invention of claims 1, 12, 18, and 20 under the judicially created doctrine of obviousness-type double patenting. Claim 1 of the present application is claiming a trailer hitch cover assembly including an insulating member disposed within between a main body and a hitch tube. Claim 1 of copending Application No. 09/982,619 does not claim this element. Morrison ‘178 claims an insert connected to a plate and fittable into the opening of the hitch socket. Claim 1 of the present application is claiming a trailer hitch cover assembly including a main body having an aperture adapted to fit over a hitch tube and to allow insertion of a hitch into the hitch tube. Morrison ‘178 does not claim this element. Strader ‘918 claims a trailer draw tongue telescopically carried within the spine and slideable longitudinally therewithin between a tow position in which the tongue extends from the spine for coupling to a tow vehicle and a retracted storage position in which the tongue is withdrawn into the spine. Claim 1 of the present application does not claim this element. Therefore, it is respectfully submitted that claims 1, 12, 18, and 20 are allowable over the rejections under the judicially created doctrine of obviousness-type double patenting.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of

his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejections of claims 1 through 8, 10, 11 through 18, and 20 are improper. Therefore, it is respectfully submitted that claims 1 through 8, 10, 11 through 18, and 20 are allowable over the rejections under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited.

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